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 as Receiver for Colonial Bank
 14

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

15
 16 IN RE: COUNTRYWIDE
 FINANCIAL CORP. MORTGAGE-
 17 BACKED SECURITIES
 LITIGATION

MDL No. 11-ML-02265-MRP (MANx)
 CASE No. 12-CV-08317-MRP (MANx)*

18 FEDERAL DEPOSIT INSURANCE
 CORPORATION AS RECEIVER
 19 FOR COLONIAL BANK,

[Judge: Hon. Mariana R. Pfaelzer]

20 Plaintiff,

**ORDER GOVERNING THE
 TREATMENT OF CONFIDENTIAL
 DISCOVERY MATERIAL**

21 v.

Courtroom: 12

22 COUNTRYWIDE SECURITIES
 CORPORATION; CWALT, INC.;
 23 CWMBS, INC.; COUNTRYWIDE
 FINANCIAL CORPORATION;
 24 BANK OF AMERICA
 CORPORATION; CITIGROUP
 25 GLOBAL MARKETS INC.; CREDIT
 SUISSE SECURITIES (USA) LLC;
 26 J.P. MORGAN SECURITIES LLC;
 MORGAN STANLEY & CO. LLC;
 27 RBS SECURITIES INC.; and UBS
 SECURITIES LLC,

28 Defendants.

1 After consideration of the terms of the foregoing Stipulation Regarding
2 Governing of the Treatment of Confidential Discovery Material (“Stipulation”), and
3 good cause appearing therefore,

4 IT IS HEREBY ORDERED that:

5 1. The Order Governing the Treatment of Confidential Discovery
6 Material (the “Order”) shall govern the disclosure and use of Confidential
7 Discovery Material (as defined below) and all other discovery material (as
8 applicable) provided during the course of the above-captioned action (the
9 “Action”), by the Parties to the Action or by nonparties, either voluntarily or as
10 required by requests for discovery made pursuant to the Federal Rules of Civil
11 Procedure, by subpoena, or by order of the Court.

12 2. Nothing in the Order shall apply to documents, information, material,
13 or any portion thereof obtained by any Receiving Person on a non-confidential
14 basis from an unrelated person or entity (“Independently Obtained Document”),
15 provided that if an Independently Obtained Document duplicates, in whole or in
16 part, documents produced to the Receiving Person and designated as Confidential
17 Discovery Material, and the Independently Obtained Document was obtained
18 directly or indirectly by the unrelated person or entity as a result of discovery from
19 any Producing Person or affiliated person or entity in any litigation or proceeding
20 involving a Party or affiliated person or entity, such Independently Obtained
21 Document, or the duplicative portion thereof, shall be treated by the Receiving
22 Person as Confidential Discovery Material. Nothing in this paragraph shall be
23 deemed to relieve any unrelated person or entity from complying with its
24 obligations under any agreement or court order that is otherwise applicable to that
25 person or entity.

26 3. As used in the Order, “person” includes any individual, entity, natural
27 person, or any business, legal or governmental entity or association. “Producing
28

Person” refers to any person that produces discovery material. “Receiving Person” refers to any person that receives discovery material subject to the Order.

4. The Order designates as “Confidential Discovery Material” documents or discovery responses that may be produced during discovery that are designated as such by a Producing Person because they contain any of the following: confidential, sensitive, or nonpublic financial information and statements; proprietary business information, including business plans and records of internal deliberations and decision-making; policies and procedures not generally published, including those concerning business operations, employee benefits and risk management procedures; surveys concerning customers, competitors and employees; and individual personal information that is protected from disclosure under state or federal law, including identifying personal information and personal financial information, about any Party, any employee of any Party, or any nonparty. It is possible that disclosure of this Confidential Discovery Material may cause harm to the Producing Persons and their employees, as well as to nonparties. The Order also designates as “Confidential Discovery Material” any document or other discovery material produced in the Action pursuant to an agreement or order requiring the reproduction of such discovery material from other litigations or proceedings (the “Reproduced Discovery Material”) where such Reproduced Discovery Material was marked or designated confidential (or a similar designation) in the litigation or proceeding in which such Reproduced Discovery Material was originally produced.

As required by plaintiff Federal Deposit Insurance Corporation (“FDIC”) in its capacity as Receiver for Colonial Bank¹ (“FDIC-R”), Confidential Discovery Material shall also include the following in *Federal Deposit Insurance Corporation as Receiver for Colonial Bank v. Countrywide Securities Corp., et al.* (Case No. 2:12-cv-08317):

¹ Colonial Bank is referred to in this Order as “the Bank.”

1 (a) Regulatory Information: Material related in any way to the
2 regulation or supervision of the Bank, in whatever form, whether preliminary
3 or final, including reports of examination or inspection, regulatory
4 correspondence, reports, orders, memoranda, or agreements by, from or with
5 the FDIC, the Board of Governors of the Federal Reserve System, the Office
6 of Financial and Insurance Regulation (“OFIR”), or any other federal or state
7 regulatory authority, and any documents containing confidential information
8 obtained from any documents or records related to the supervision or
9 regulation of the Bank. The release of any such regulatory documents may
10 require prior approval from other government agencies, including but not
11 limited to the FDIC in its corporate capacity (“FDIC-C”). No regulatory
12 material, however obtained, shall be disclosed to anyone other than the
13 Parties and other persons or entities identified in paragraph 10 below without
14 prior approval by the respective regulatory authority or a court order.
15 Confidential Discovery Material also includes documents that are exempt
16 from disclosure as provided in the Freedom of Information Act, 5 U.S.C. §
17 552 (“FOIA”), the regulations governing the disclosure of information, 12
18 C.F.R. Parts 261 and 309, the laws of the State of Alabama, or any other
19 applicable federal or state laws.

20 (b) Information Protected by Law: Any information that a
21 disclosing party is obligated by law to keep confidential, including but not
22 limited to, nonpublic personal information such as social security numbers,
23 home telephone numbers and addresses, tax returns, medical information,
24 credit information, banking information, documents or data that constitute
25 “consumer reports,” as that term is defined in the Fair Credit Reporting Act,
26 15 U.S.C. § 1681a, and other sensitive personally identifiable information,
27 other than information for which applicable federal or state law requires
28 confidential treatment, and/or “Nonparty Borrower Information,” which for

1 purposes of this Order shall mean any information that constitutes “nonpublic
2 personal information” within the meaning of Section 509(4) of the Gramm-
3 Leach-Bliley Act, 15 U.S.C. § 6809 and its implementing regulations,
4 including, but not limited to, any portion of a mortgage loan file or other
5 document that includes financial or credit information for any person
6 (including any credit history, report, or score obtained on any such person to
7 determine the individual’s eligibility for credit) together with personally
8 identifiable information with respect to such person, including, but not
9 limited to, name, address, social security number, loan numbers, telephone
10 number, or place or position of work. As set forth in paragraph 25 below,
11 this Order authorizes the disclosure of such Nonparty Borrower Information
12 in the above-captioned action.

13 (c) Bank Information: Material related to the Bank, including but
14 not limited to: chargebacks, merchant processing, bank account information,
15 customer bank records, signature cards, bank statements, general ledger
16 entries, deposit or reserve information, trading statements and records, loans
17 and lending transactions, financial statements and credit reports, business and
18 personal state and federal income tax forms, correspondence, and loan
19 documentation relating to any extension of credit or loan to any borrower.

20 (d) Receivership Information: Material related to the receivership of
21 the Bank, including any information on loss or estimates of such loss on the
22 Bank’s assets that is not publicly available. Notwithstanding any other
23 provision of this Order, no confidential material shall be disclosed to any
24 person or entity known to have any current or prospective interest in such
25 assets, whether or not that person or entity would otherwise be allowed
26 access to material under the terms of this Order.

1 (e) Trade Secret/Proprietary Information: Material that the
2 producing party reasonably believes constitutes, reflects, or discloses trade
3 secrets, proprietary data or commercially sensitive information.

4 (f) Except as provided by the express terms of this Order, all
5 persons subject to the Order shall refrain from disclosing in any manner any
6 information set forth in any confidential material. However, the transmission
7 of confidential material between the FDIC-R and the FDIC acting in any
8 other capacity shall not constitute a violation of this paragraph or of any
9 other provision of this Order. Any confidential material transmitted among
10 various capacities of the FDIC shall remain subject to this Order and its
11 prohibition on disclosure.

12 (g) Nothing in paragraphs 4(a)-(g) or any other provision of this
13 Order, shall constitute a waiver by FDIC, FDIC-R, FDIC-C or FDIC in any
14 other capacity, of any privilege, doctrine or other objection to production of
15 any Regulatory Information, Information Protected by Law, Bank
16 Information, Receivership Information, Trade Secret/Proprietary Information
17 or any other Information.

18 5. This Order permits the designation as “Confidential–Attorneys and
19 Experts Only” of documents or information produced during discovery that contain
20 sensitive, proprietary, confidential, and personal information which a Producing
21 Person in good faith believes constitute Confidential Discovery Material but for
22 which “Confidential Discovery Material” status may not provide sufficient
23 protection. Material that is designated “Confidential–Attorneys and Experts Only”
24 shall be subject to all the protective terms applicable to “Confidential Discovery
25 Material” as well as the more protective measures expressly set forth herein. The
26 limitations set forth under this paragraph shall only be modified by agreement
27 among the Parties and Order of the Court. The Order hereby designates as
28 “Confidential–Attorneys and Experts Only” any Reproduced Discovery Material

1 where such Reproduced Discovery Material was marked or designated highly
2 confidential (or a similar designation) in the litigation or proceeding in which such
3 Reproduced Discovery Material was originally produced.

4 6. All documents designated as Confidential Discovery Material shall be
5 so designated, by Bates range, in a letter accompanying their production to a
6 Receiving Person, and/or by stamping the media in which the documents are
7 transmitted, and/or by stamping each page of a document "CONFIDENTIAL,"
8 "CONFIDENTIAL DISCOVERY MATERIAL," or "CONFIDENTIAL
9 TREATMENT REQUESTED BY [name of the Producing Person]." Documents
10 may be designated as Confidential Discovery Material at any time. Without
11 limiting the foregoing sentence in any way, a Producing Person may designate a
12 document as Confidential Discovery Material after it was earlier produced without
13 such a designation, and such production, in and of itself, shall not prejudice or
14 otherwise constitute a waiver of, or estoppel as to, any claim of confidentiality to
15 which the Producing Person would otherwise be entitled. Any documents
16 designated as Confidential Discovery Material prior to entry of this Order shall be
17 treated the same in all respects as documents designated as Confidential Discovery
18 Material after the entry of this Order. This Order also treats as Confidential
19 Discovery Material oral communications designated as confidential either orally
20 (provided that such designation was recorded by a court reporter) or in writing.
21 Materials designated as CONFIDENTIAL pursuant to this Order shall be
22 designated and marked as follows:

23 (a) Documents or TIFF Images: Documents or TIFF images may
24 be designated as Confidential Discovery Material or Confidential—Attorneys
25 and Experts Only Discovery Material by placing the legend
26 "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS AND
27 EXPERTS ONLY," or an equivalent thereof, on any such document or
28 image. Unless the Parties otherwise agree, such legend shall be placed upon

1 every page of each document or image containing CONFIDENTIAL
2 INFORMATION or CONFIDENTIAL—ATTORNEYS AND EXPERTS
3 ONLY INFORMATION. In lieu of marking the originals of documents, the
4 disclosing party may mark the copies that are produced or exchanged.
5 Notwithstanding the foregoing, Excel documents or any other type of
6 electronically stored information produced in native format (together,
7 “Natively Produced ESI”) containing CONFIDENTIAL INFORMATION or
8 CONFIDENTIAL—ATTORNEYS AND EXPERTS ONLY
9 INFORMATION need not be produced using a means sufficient to ensure
10 that every page of such document, when printed, contains the appropriate
11 mark or stamp. Instead, the disclosing party shall use reasonable means to
12 designate as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS
13 AND EXPERTS ONLY” such Natively Produced ESI, including, where
14 applicable and/or practicable, by (i) producing a TIFF placeholder image
15 corresponding to the Natively Produced ESI that includes the
16 “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS AND
17 EXPERTS ONLY” mark; (ii) including “CONFIDENTIAL” or
18 “CONFIDENTIAL—ATTORNEYS AND EXPERTS ONLY” in the file
19 name of the Natively Produced ESI; or (iii) including “CONFIDENTIAL” or
20 “CONFIDENTIAL—ATTORNEYS AND EXPERTS ONLY” on the label
21 of the media or in the production letter for the Natively Produced ESI.

22 (b) Non-paper Media: Where CONFIDENTIAL INFORMATION
23 or CONFIDENTIAL—ATTORNEYS AND EXPERTS ONLY
24 INFORMATION is produced in a non-paper medium (e.g., video tape, audio
25 tape, computer disks, etc.) that does not include TIFF images, the appropriate
26 confidentiality notice as described in paragraph 4(a) above should be placed
27 on the medium, if possible, and its container, if any, so as to give clear notice
28 of the designation. To the extent that any receiving party prints any of the

1 information contained on non-paper media that is designated as containing
2 CONFIDENTIAL INFORMATION or CONFIDENTIAL—ATTORNEYS
3 AND EXPERTS ONLY INFORMATION, such printouts will be marked as
4 described in paragraph 4(a) above by the receiving party.

5 (c) Physical Exhibits: The confidential or confidential—attorneys
6 and experts only status of a physical exhibit shall be indicated by placing a
7 label on said physical exhibit with the appropriate confidentiality notice as
8 described in paragraph 4(a) above.

9 (d) Written Discovery: In the case of CONFIDENTIAL
10 INFORMATION or CONFIDENTIAL—ATTORNEYS AND EXPERTS
11 ONLY INFORMATION incorporated in answers to interrogatories,
12 responses to requests for admission, or other written discovery, the
13 appropriate confidentiality designation as described in paragraph 4(a) above
14 shall be placed on the first page of the document and on each page containing
15 answers or responses that contain CONFIDENTIAL INFORMATION or
16 CONFIDENTIAL—ATTORNEYS AND EXPERTS ONLY
17 INFORMATION.

18 7. Confidential Discovery Material also includes those portions of any
19 notes, work papers or other work product that contain information from documents
20 designated as Confidential Discovery Material without the need for a separate
21 confidential designation on the notes, work paper, or other work product.

22 8. If discovery material is inspected at the Producing Person's choice of
23 location, all such discovery material shall be presumed at such inspection to have
24 been designated as Confidential Discovery Material by the Producing Person until
25 such time as the Producing Person provides copies to the Party that requested the
26 discovery material. Production of Confidential Discovery Material for inspection
27 and copying shall not constitute a waiver of confidentiality.
28

1 9. Nonparty Borrower Information Designation. The Parties have agreed
2 to produce or have served or intend to serve document requests, interrogatories or
3 other requests, and/or have issued or intend to issue subpoenas to nonparties for
4 documents and other information, which require production of certain records
5 relating to individual mortgage loan files (“loan files”) and/or to the servicing of
6 those loans (“servicing records”). The loan files, servicing records, and related
7 documents contain non-public personal information and/or other sensitive
8 personally identifying information pertaining to individual borrowers, and
9 information that constitutes “nonpublic personal information” within the meaning
10 of the Gramm Leach Bliley Act, 15 U.S.C. § 6802, *et seq.* and its implementing
11 regulations, including, but not limited to, any portion of a loan file or other
12 document which includes financial and/or credit information pertaining to
13 individual borrowers (including any credit history, report or score obtained on any
14 such borrowers to determine the individual’s eligibility for credit) together with
15 personally identifying information with respect to such borrowers, which may
16 include, but is not limited to, names, addresses, Social Security numbers, and places
17 or positions of work (“Nonparty Borrower Information”).

18 (a) Any Person (including nonparties) producing material through
19 discovery may designate loan files, servicing records, or related documents
20 that it discloses during discovery in this matter, including, but not limited to,
21 the Nonparty Borrower Information contained therein, as Confidential
22 Discovery Material because the materials constitute, contain, reveal or
23 evidence “non-public personal information.”

24 (b) Any Person (including nonparties) receiving non-public
25 personal information consisting of, derived from, or related to loan files or
26 servicing records produced in discovery, regardless of whether such material
27 is designated with the appropriate designation, shall use that material solely
28 for the purpose of conducting the Action. Notwithstanding the foregoing,

1 nothing in this Order shall require any Receiving Person to disregard or
2 violate any order, direction, or regulatory requirement of any governmental
3 authority, subject to the provisions set for the in paragraph 16.

4 (c) In order to expedite production of loan files and servicing
5 records, a Producing Person may, at its sole option, produce materials
6 without a detailed or any review, subject to the “clawback” procedures in this
7 Order (paragraph 17) or as otherwise agreed to. In doing so, the Producing
8 Person may designate the contents of loan files, servicing records, or related
9 documents that by their nature contain Nonparty Borrower Information with
10 the appropriate designation even if some of the documents in the collection
11 may not, considered individually, qualify for such designation.

12 (d) The Producing Person shall designate Nonparty Borrower
13 Information material as follows:

14 (i) In the case of information in documentary form, the
15 Producing Person shall designate the documents as Confidential
16 Discovery Material in the manner described above in paragraph
17 6, except that bulk productions may be designated as set forth in
18 paragraph 9(d)(iii).

19 (ii) Nonparty Borrower Information may be used in
20 depositions. The party using such information in a deposition
21 should designate any portion of the deposition testimony
22 discussing such information as Confidential Discovery Material
23 pursuant to the procedure outlined in paragraph 12.

24 (iii) Any Nonparty Borrower Information produced in a non-
25 paper media (*e.g.*, computer disks or drives) and/or bulk
26 productions in native format or without Bates numbers may be
27 designated as such by affixing the legend CONFIDENTIAL in a
28 prominent place on the exterior of the container in which the

1 information is stored and/or on the first page of a document
2 and/or on the relevant page(s) of the document. In the event a
3 Receiving Person generates any electronic copy, hard copy,
4 transcription, or printout from any such designated non-paper
5 media, that Receiving Person must treat each copy,
6 transcription, or printout as confidential pursuant to the terms of
7 this Order.

8 10. Treatment of Confidential Discovery Material. Confidential
9 Discovery Material shall be subject to the following restrictions:

10 (a) Confidential Discovery Material shall be used solely for the
11 purpose of preparing for, and conducting, the prosecution or defense of the
12 Action, including any appeals thereof, and shall not be used by the Parties or
13 any other person for any commercial, business, competitive or other purpose.
14 Absent consent from a Producing Person, which shall be given solely in that
15 Producing Person's discretion, no Confidential Discovery Material produced
16 by such Producing Person may be used in connection with any litigation,
17 matter or proceeding other than the Action.

18 (b) Confidential Discovery Material shall not be given, shown,
19 made available or communicated in any way to anyone except those persons
20 specified in subparagraph (c) below to whom it is reasonably necessary that
21 such Confidential Discovery Material be given or shown for the purposes
22 permitted under subparagraph (a) above, and shall not be disclosed by them,
23 subject to the provision at the end of this paragraph governing further
24 restrictions on dissemination of material designated Confidential –Attorneys
25 and Experts Only.

26 (c) Confidential Discovery Material may be disclosed, for the
27 purposes set forth in subparagraph (a) above, only to a "Qualified Person,"
28 defined as follows:

1 (i) counsel of record for the Parties, and attorneys, paralegal,
2 clerical and other staff employed or retained by such counsel who are
3 assisting in the conduct of the Action;

4 (ii) those officers, directors, and representatives (including
5 legal representatives) of the Parties deemed necessary to aid counsel in
6 the conduct of the Action;

7 (iii) any and all individual Defendants in the Action;

8 (iv) witnesses and prospective witnesses (other than Parties) at
9 any deposition or hearing in the Action, *provided, however*, that the
10 witness shall not retain any documents marked as Confidential
11 Discovery Material;

12 (v) consultants, experts, and investigators (including their
13 professional staffs) retained by the Parties, or their respective counsel,
14 as they in good faith deem necessary to provide assistance in
15 connection with the conduct of the Action;

16 (vi) the Court, court personnel, and jurors, potential jurors or
17 alternate jurors;

18 (vii) court reporters and videographers used in connection with
19 the conduct of the Action;

20 (viii) outside photocopying services, graphic production
21 services, litigation support services, and document hosting vendors
22 retained by the Parties, or their respective counsel, as they in good
23 faith deem necessary to provide assistance in connection with the
24 conduct of the Action;

25 (ix) persons who are or were authors or recipients of the
26 Confidential Discovery Material;

27 (x) any person carrying on an insurance business that may be
28 liable to satisfy part or all of any judgment which may be entered in

1 the Action or to indemnify or reimburse for payments made to satisfy a
2 judgment;

3 (xi) mediators, arbitrators, or discovery masters (and their
4 support staff), if any, assisting in the Action;

5 (xii) any nonparty reasonably believed to have originated a
6 loan at issue in the Action or to be in possession, custody, or control of
7 a loan file at issue in the Action, which may receive Nonparty
8 Borrower Information for that loan for the purpose of locating the loan
9 file; and

10 (xiii) any nonparty reasonably believed to have conducted due
11 diligence on the securitizations or mortgage loans at issue in the
12 Action or to be in possession, custody, or control of documents related
13 to such due diligence, but such nonparty may only receive the specific
14 Nonparty Borrower Information that it represents is necessary for it to
15 locate documents relating to such due diligence.

16 (d) Documents or information designated as “Confidential –
17 Attorneys and Experts Only” shall be disclosed only to attorneys of record
18 and in-house or other retained counsel for the Parties to the Action, the
19 authorized secretarial and legal assistance staff of such attorneys and counsel,
20 photocopying and litigation support services as provided in paragraph
21 10(c)(viii), witnesses as provided in paragraph 10(c)(iv), the Court and Court
22 personnel as provided in paragraph 10(c)(vi), and, subject to paragraph
23 10(c)(v), to consultants, experts, and their staff retained by the Parties or their
24 attorneys for purposes of the Action. No documents or information
25 designated as “Confidential–Attorneys and Experts Only” shall be disclosed
26 to any third party or to any Party of the Action, other than the Producing
27 Person, except by written stipulation of the Parties, by order of the Court, or
28 as otherwise provided herein. Documents or things designated as

1 “Confidential–Attorneys and Experts Only” shall not be retained, filed, or
2 stored on the premises of any Party.

3 (e) Each person described in subparagraph 10(c), (iv), (v), (x), (xi)
4 and (xii) to whom Confidential Discovery Material is disclosed shall first be
5 advised that such material is being disclosed pursuant and subject to the
6 terms of the Order and that it may not be disclosed other than pursuant to the
7 terms hereof. Prior to disclosing Confidential Discovery Material to any
8 person described in subparagraph 10(c)(iv), (v), (x), (xi) and (xii) above,
9 counsel shall cause each such person to execute a certificate in the form
10 annexed hereto as Exhibit A, although no Exhibit A shall be required from
11 persons or entities that receive only such Confidential Discovery Material to
12 which they are reasonably believed to have had prior access. Counsel shall
13 be responsible for retaining executed certificates. Any person receiving
14 Confidential Discovery Material is enjoined from disclosing that information
15 to any other person, except in accordance with this Order.

16 11. Inadvertent Disclosure of Confidential Discovery Material. If any
17 Receiving Person inadvertently discloses Confidential Discovery Material to
18 persons who are not Qualified Persons, counsel for the Receiving Person shall
19 make all reasonable efforts to retrieve the Confidential Discovery Material and to
20 obtain the agreement of persons to whom inadvertent disclosure was made to treat
21 the Confidential Discovery Material in accordance with the terms of the Order.
22 Such disclosure shall also be reported in writing, via overnight delivery service or
23 email, to the Producing Person who produced such inadvertently disclosed
24 Confidential Discovery Material promptly, and in no event later than three business
25 days from the discovery of such disclosure.

26 12. Confidential Discovery Material and Depositions. Information or
27 testimony disclosed at a deposition may be designated as Confidential Discovery
28

1 Material by the person providing such testimony, by a Party, or by a Producing
2 Person if such person either

3 (a) identifies on the record at the deposition those portions of the
4 testimony that are designated as Confidential Discovery Material; or

5 (b) provides written notification to all Parties within thirty days of
6 the court reporter's release of the transcript of the deposition as to those
7 portions of the transcript that are designated as Confidential Discovery
8 Material.

9 Except to the extent the Parties otherwise agree, the entire transcript of any
10 deposition shall be treated as Confidential Discovery Material until thirty (30) days
11 after the court reporter's release of the transcript of the deposition. The deposition
12 transcript that contains Confidential Discovery Material designated pursuant to
13 subparagraph (a) above shall be stamped, as set forth in paragraph 10 above, by the
14 court reporter or by counsel. If counsel for any Party believes that a question put to
15 a witness being examined in deposition will disclose Confidential Discovery
16 Material, or that the answer to any question or questions requires such disclosure,
17 or if documents to be used as exhibits during the examination contain such
18 Confidential Discovery Material, such counsel may so notify the examining
19 counsel, and, in that event, that portion of the deposition shall be taken in the
20 presence only of counsel, Parties to the Action, the court reporter, video operator
21 and their assistants. The court reporter shall indicate in the transcript the portion of
22 the transcript that is to be kept confidential, and shall mark the cover page of the
23 transcript accordingly.

24 13. Filing Confidential Discovery Material. In the event that any person
25 discloses Confidential Discovery Material in any pleading, court filing, attachment
26 or exhibit thereto, or other papers filed with the Court prior to trial, the disclosing
27 person shall conditionally file the documents containing Confidential Discovery
28 Material under seal with the Clerk of this Court pursuant to Local Rule 79-5. The

1 Parties understand that designation of materials as Confidential Discovery Material
2 or as Confidential–Attorneys and Experts Only does not automatically entitle the
3 Parties to have such information kept under seal and that any submission of
4 documents under seal should seek to file under seal only those portions of the
5 documents that contain Confidential Discovery Material, *see, e.g., Kamaka v. City*
6 *& County of Honolulu*, 447 F.3d 1172, 1178-81 (9th Cir. 2006), and should be made
7 to the judicial officer presiding over the proceedings in question. To the extent
8 documents containing Nonparty Borrower Information are to be filed with the
9 Court or used as exhibits in any hearing, unless otherwise ordered by the Court, the
10 filing party must either exclude from the exhibits or redact any Nonparty Borrower
11 Information sufficiently to ensure that nonparty borrower identities, or information
12 from which their identities could be ascertained, is masked and not discernible.
13 This Order does not address the use of Confidential Discovery Material for use at
14 trial. The Parties agree to meet and confer regarding use of Confidential Discovery
15 Material in connection with trial and to raise the issue with the Court at an
16 appropriate time.

17 14. Objections to Confidential Classification. No Party concedes that any
18 discovery material designated by any other person as Confidential Discovery
19 Material under any provision of the Order in fact contains or reflects trade secrets,
20 proprietary or confidential information, or has been properly designated as
21 Confidential Discovery Material, and entering into the Stipulation shall not
22 prejudice the right of a Party to seek, at any time, a determination by the Court of
23 whether any particular document or information should be subject to the terms of
24 the Order. Nor does the availability of Confidential Discovery Material status or
25 Confidential–Attorneys and Experts Only status suggest that all documents or other
26 materials are properly discoverable, and shall not affect any other valid objection to
27 production of documents or other materials.
28

1 A Receiving Person shall not be obliged to challenge the propriety of a
2 designation of documents or other material as Confidential Discovery Material at
3 the time made or thereafter, and failure to do so shall not preclude a subsequent
4 challenge thereof. If, at any time a Receiving Person objects to a designation under
5 the Order (an "Objecting Party"), the Objecting Party shall notify the Producing
6 Person in writing. The Objecting Party shall identify the information in question
7 and shall specify in reasonable detail the reason or reasons for the objection, and
8 shall otherwise comply with Local Civil Rule 37-1. Within (10) calendar days of
9 the receipt of such written notice, the Producing Person and Objecting Party shall
10 meet and confer in an effort to resolve their differences. If the disagreement cannot
11 be resolved, the Objecting Party may apply to the Court within ten (10) calendar
12 days for an order overruling the Producing Person's designation. The application
13 of the Objecting Party shall comply with Local Civil Rules 37-2 and 37-3, and the
14 Producing Person shall have the burden of demonstrating that the document or
15 material designated as Confidential Discovery Material is deserving of confidential
16 treatment or other protection under the terms of the Order. If the Objecting Party
17 does not make such an application to the Court, the documents or material to which
18 an objection was directed will still be considered Confidential Discovery Material
19 under the Order. While any such application is pending, the documents or material
20 subject to that application will remain Confidential Discovery Material until the
21 Court rules.

22 Notwithstanding any other provision of this Order, no person shall challenge
23 in any way any confidentiality designation placed on Reproduced Discovery
24 Material if such designation was previously challenged and upheld in the matter in
25 which it was originally produced. With respect to Reproduced Discovery Material
26 that is subsequently designated confidential (or highly confidential or any similar
27 designation) in the litigation or proceedings in which such Reproduced Discovery
28 was originally produced, the Producing Person shall promptly notify any Receiving

1 Person of such subsequent designation. In such case, within fourteen (14) days of
2 such subsequent designation, the Producing Person shall provide the Receiving
3 Person with corrected copies of such Reproduced Discovery Material, bearing the
4 subsequently designated confidentiality designation. If any person challenges any
5 confidentiality designation placed on Reproduced Discovery Material, the Parties
6 should cooperate to accommodate the terms of the protective order or
7 confidentiality stipulation that governed in the litigation or proceedings in which
8 such Reproduced Discovery Material was originally produced, but the Court will
9 ultimately apply this Protective Order to Confidential Discovery Material produced
10 in the Action.

11 15. Breach of Confidentiality. In the event that the Court determines that
12 there is an actual or threatened violation of this Order by a Receiving Person, the
13 Parties agree that the Producing Person would not have an adequate remedy at law
14 and would be entitled to specific performance, and/or injunctive relief, to enforce
15 the terms of the Order, in addition to any other remedy to which the Producing
16 Person may be entitled at law or in equity.

17 16. Legal Process. If any Receiving Person (a) is subpoenaed in another
18 action, (b) is served with a demand in another action to which he, she, or it is a
19 party, or (c) receives a demand or request for documents from a legal or regulatory
20 organization with jurisdiction over it and such subpoena, demand, or request seeks
21 Confidential Discovery Material, the Receiving Person shall (unless prohibited by
22 law or regulation) give written notice, by hand or by e-mail, no later than the earlier
23 of (i) seven business days after receipt of such subpoena, demand, or request for
24 documents or (ii) seven business days before any response to the subpoena,
25 demand, or request is due, to all Parties, and to any nonparty who produced or
26 designated the discovery material as Confidential Discovery Material, and in no
27 event shall produce such requested material prior to providing such notice. Any
28 Party or Producing Person may seek a protective order or other court-ordered relief

1 to prevent the requested production. Should a Party or Producing Person seek a
2 protective order or other court-ordered relief, then the Receiving Person shall not
3 produce any of the Producing Person's Confidential Discovery Material, until a
4 final decision that is no longer subject to appellate review orders such production,
5 provided that a Party or Producing Person must file any Notice of Appeal or Motion
6 for permission to Appeal from a lower court order not later than thirty (30) days
7 after Notice of Entry of that order is served. If a Receiving Person is subpoenaed or
8 requested to produce Confidential Discovery Material by a regulatory or self-
9 regulatory agency with jurisdiction over it, through a process which by law,
10 regulation, interpretive letter, regulatory policy, or compulsory process requires the
11 Receiving Person to produce requested materials without objection, without notice
12 to other Parties, or without delay, the Receiving Person shall be permitted to do so
13 notwithstanding any provisions of this Order, including the advance notice
14 provisions, to the contrary.

15 17. Clawback of Protected Produced Documents. Upon notification that a
16 document or other discovery material has been inadvertently produced and/or that a
17 claim of attorney-client privilege, attorney work product, or other applicable
18 privilege or protection will be made with regard to such document or other
19 discovery material, the party receiving such notice shall promptly return or, at the
20 Producing Person's option, destroy any and all copies of such document or other
21 discovery material and shall refrain from reading or reviewing said document or
22 discovery material beyond the extent necessary to identify it as the inadvertently
23 produced material, or from utilizing it in any manner or form including without
24 limitation, use during the course of a deposition, review with witnesses, use by
25 counsel or otherwise to prosecute this or any other action, or any other use,
26 disclosure or review whatsoever. The Receiving Person shall also remove all
27 references to such material from any attorney work product. The inadvertent
28 production of any document or discovery that subsequently is retrieved or destroyed

1 pursuant to this paragraph shall not be deemed to be a waiver of the claim of
2 privilege or protection asserted in the Action or in any other proceeding, including
3 in Federal or State proceedings. Notwithstanding the foregoing, nothing in this
4 paragraph shall prevent a Receiving Person, after promptly returning or destroying
5 the discovery material, from challenging the Producing Person's designation of the
6 document or discovery as subject to attorney-client privilege, attorney work
7 product, or other applicable privilege or protection or otherwise not subject to
8 production, provided that (a) such challenge complies with Local Rules 37-1
9 through 37-4, (b) any review by the Court of the materials in question is conducted
10 *in camera*, and (c) the challenge shall not assert as a ground or basis that the
11 Producing Person waived any privilege or protection because of the inadvertent
12 disclosure.

13 A Receiving Person may obtain from a Producing Person any privilege log(s)
14 relating to any Reproduced Discovery Material, but only to the extent such
15 privilege log exists, and the Producing Person shall use its best efforts to provide
16 such privilege log(s) to the Receiving Person within fourteen (14) calendar days of
17 production of the Reproduced Discovery Material or within fourteen (14) calendar
18 days of when a privilege log is provided in the litigation or proceeding in which
19 such Reproduced Discovery Material was originally produced. A Receiving Person
20 may not demand the creation of a privilege log in connection with Reproduced
21 Discovery Material, nor shall a Producing Person be required to create any such
22 privilege log, and the failure to create or provide one shall not constitute a waiver or
23 any privilege or protection. No person shall challenge privilege log(s) relating to
24 any Reproduced Discovery Material or any designation of Reproduced Discovery
25 Material as subject to the attorney-client privilege, attorney work product, or any
26 other privilege or protection, or as otherwise not subject to production, except in
27 accordance with the instructions given by this Court during the May 10, 2013 status
28

1 conference held in the Related Actions.² With respect to Reproduced Discovery
 2 Material that is subsequently designated as privileged or otherwise not subject to
 3 production in the litigation or proceeding in which such Reproduced Discovery
 4 Material was originally produced, the Producing Person shall promptly notify any
 5 Receiving Person of such subsequent designation, and such Receiving Person shall,
 6 within fourteen (14) calendar days, destroy all such subsequently designated
 7 Reproduced Discovery Material and certify to the Producing Person that it has done
 8 so.

9 18. The Order shall be without prejudice to the rights of a Producing
 10 Person to seek further limits on disclosure or protections for the confidentiality of
 11 any discovery material (whether or not designated as Confidential Discovery
 12 Material) in addition to the limits and protections provided herein, including,
 13 without limitation, that access to or disclosure of any discovery material be limited
 14 solely to counsel for a Party or to other specified persons and without prejudice to
 15 the rights of any other person to contest such application.

16 19. Any additional parties that join or are joined in the Action, may have
 17 access to materials produced pursuant to this Order only after the party executes
 18 and files with the Court a stipulation agreeing to be fully bound by the Order.
 19 Nonparties producing discovery materials may gain the benefits of this Order with
 20 respect to any discovery materials they produce by designating as
 21 “CONFIDENTIAL” the discovery material they produce.

22
 23 ² The Related Actions are *Allstate Ins. Co., et al. v. Countrywide Financial*
 24 *Corp., et al.*, 2:11-cv-05236-MRP (MANx); *Bank Hapoalim, B.M. v. Bank of*
 25 *America Corp., et al.*, 2:12-cv-04316-MRP (MANx); *Minn. Life Ins. Co., et al. v.*
 26 *Countrywide Financial Corp., et al.*, 2:12-cv-06149-MRP (MANx); *Nat. Integrity*
 27 *Ins. Co. v. Countrywide Financial Corp., et al.*, 2:11-cv-09889-MRP (MANx);
 28 *Federal Deposit Insurance Corporation as Receiver for United Western Bank,*
F.S.B. v. Countrywide Financial Corp., et al., 2:11-cv-10400-MRP (MANx); *Mass.*
Mutual Life Ins. Co. v. Countrywide Financial Corp., et al., 2:11-cv-10414-MRP
 (MANx).

1 20. Final Disposition. Unless otherwise ordered or agreed in writing by
2 the Producing Person, within sixty (60) days after the final termination of the
3 Action, including any appeals, each Receiving Person must take commercially
4 reasonable efforts to either return all Confidential Discovery Material to the
5 Producing Person, or, at its option, destroy it. Notwithstanding this provision,
6 counsel for the Parties may retain an archival copy of all pleadings, motion papers,
7 transcripts, legal memoranda, correspondence, or attorney work product, even if
8 such materials contain Confidential Discovery Material. Any such archival copies
9 that contain or constitute Confidential Discovery Material remain subject to this
10 Order until the Producing Person agrees otherwise in writing or this Court orders
11 otherwise.

12 21. This Order shall survive the termination of the Action. No part of the
13 restrictions imposed by this Order may be waived or terminated, except by written
14 stipulation executed by outside counsel of record for each Producing Person or by
15 an Order of the Court.

16 22. The Parties may jointly seek to amend or modify this Order, subject to
17 Court approval.

18 23. Notwithstanding any provision contained herein, nothing in this Order
19 shall restrict in any way the right of a Party to make use of its own discovery
20 material in any way it deems fit.

21 24. Nothing in this Order shall be deemed a waiver of any of the Parties'
22 rights to oppose any discovery on any grounds or to object on any ground to the
23 admission in evidence at any motion hearing or the trial of the Action of any matter
24 discovered.

25 25. Disclosure of Nonparty Borrower Information. To the extent any
26 federal or state law or other legal authority governing the disclosure or use of
27 Nonparty Borrower Information ("Nonparty Borrower Information Law") permits
28 disclosure of such information pursuant to an order of a court, this Order shall

1 constitute compliance with such requirement. To the extent any Nonparty
2 Borrower Information Law requires a party to obtain a court-ordered subpoena or
3 give notice to or obtain consent, in any form or manner, from any person or entity
4 before disclosure of any Nonparty Borrower Information, the Court finds that, in
5 view of the protections provided for the information disclosed in this Order, the
6 volume of documents to be produced and the ongoing oversight of the Court, there
7 is good cause to excuse such requirement, and the Court hereby **Orders** that the
8 party is exempted from obtaining a court-ordered subpoena or having to notify or
9 obtain consent from any person or entity prior to the disclosure of Nonparty
10 Borrower Information Law requires that any person or entity be notified prior to
11 disclosure of Nonparty Borrower Information except where such notice is
12 prohibited by court order, the Court hereby **Orders**, in view of the protections
13 provided for the information disclosed in this Order, the volume of documents to be
14 produced and the ongoing oversight of the Court, that the Parties are explicitly
15 prohibited from providing such notice; *provided, however*, that this Order shall not
16 prohibit any party from contacting any person or entity for any other purpose. Any
17 Producing Person may seek additional orders from this Court that it believes may
18 be necessary to comply with any Nonparty Borrower Information Law.

19 IT IS SO ORDERED.

20
21 DATED: July 31, 2013



22
23 HON. MARIANA R. PFAELZER

24 UNITED STATES DISTRICT JUDGE
25
26
27
28

ACKNOWLEDGEMENT

I have been informed that on _____, the United States District Court for the Central District of California entered an ORDER GOVERNING THE TREATMENT OF CONFIDENTIAL DISCOVERY MATERIAL in *Federal Deposit Insurance Corporation as Receiver for Colonial Bank v. Countrywide Securities Corp., et al.*, 2:12-cv-08317-MRP (MANx) (the “Order”). I have read the Order, agree to abide by the terms of the Order as they apply to me, and voluntarily submit to the jurisdiction of the United States District Court for the Central District of California for purposes of any proceeding related to the Order, including my receipt or review of information that has been designated as CONFIDENTIAL.

(Signature)

(Printed Name)